IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

WP(C).No. 13603 of 2006(T)

PETITIONER:

STANLEY LAWRENCE PEREIRA,
S/O. LAWRENCE A. PEREIRA, AGED 65 YEARS,
C/O. NOBERT MIRANDA SERENE, PRA 139,
POTTAKUZHI, PATTOM P.O., TRIVANDRUM.

BY ADV. SRI.R.S.KALKURA

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY, GOVERNMENT OF KERALA, SECRETARIAT, TRIVANDRUM.

2. M/S. STANDARD CHARTERED BANK, HDFC HOUSE, M.G. ROAD, RAVIPURAM JUNCTION, ERNAKULAM, REPRESENTED BY ITS MANAGER.

3. THE BANKING OMBUDSMAN, RESERVE BANK OF INDIA BUILDING, TRIVANDRUM.

4. RESERVE BANK OF INDIA, TRIVANDRUM.

BY ADV. SRI.P.JACOB VARGHESE, SC, RBI
SRI.C.VIVEK FOR R2
SMT.SREEKALA KRISHNADAS
GOVERNMENT PLEADER SRI.D.ANILKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.13603/06

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE FIXED DEPOSIT RECEIPTS ISSUED BY THE 2ND RESPONDENT DT.5.8.1996.

EXT.P2: TRUE COPY OF THE FIXED DEPOSIT RECEIPTS ISSUED BY THE 2ND respondent DT.4.9.1996.

EXT.P3: TRUE COPY OF THE FIXED DEPOSIT RECEIPTS ISSUED BY THE 2ND RESPONDENT DT.14.11.1996.

EXT.P4: TRUE COPY OF THE FIXED DEPOSIT RECEIPTS ISSUED BY THE 2ND respondent DT.21.1.1997.

EXT.P5: TRUE COPY OF THE TRANSLATED COPY OF THE JUDGMENT OF THE UNITED APPELLATE COURT OF ABUDHABI, PENAL DIVISION DT.10.4.05.

EXT.P6: TRUE COPY OF THE LETTER DT.22.11.2005 ISSUED BY THE PETITIONER TO THE 2ND RESPONDENT.

EXT.P7: TRUE COPY OF THE LETTER DT.28.11.2005.

EXT.P8: TRUE COPY OF THE SCRIBBLING PAD.

EXT.P9: TRUE COPY OF THE LETTER OF SANCTION ISSUED BY THE 2ND RESPONDENT.

EXT.P10: TRUE COPY OF THE LETTER DT.7.7.97 ISSUED BY THE EMPLOYER OF THE PETITIONER.

EXT.P11: TRUE COPY OF THE LETTER DT.5.4.2006.

EXT.P12: TRUE COPY OF THE COMPLAINT DT.28.11.05 SUBMITTED BEFORE THE BANKING OMBUDSMAN.

EXT.P13: TRUE COPY OF THE COMMUNICATION DATED 10.4.2006.

EXHIBITS OF R2

EXT.R2A-D: AGREEMENTS CREATING CHARGE OVER THE DEPOSITS.

EXT.R2E-H: NOTICES OF CHARGE.

EXT.R2 I: INSTRUCTION FROM THE ABU DHABI BRANCH DT.26.12.2000.

EXT.R2 J: DETAILED STATEMENT FROM THE ABU DHABI BRANCH.

EXT.R2 K: LETTER DATED 22.11.2005 FROM THE PETITIONER.

EXT.R2 L: LETTER DT.25.11.2005 ISSUED BY THE 2ND RESPONDENT.

EXT.R2 M: LETTER TO THE BANKING OMBUDSMAN DT.28.11.2005 BY THE PETITIONER.

EXT.R2N-P: NOTICES FROM THE BANKING OMBUDSMAN.

EXT.R2 Q: LETTER DATED 1.3.06 BY THE BANK TO THE OMBUDSMAN.

EXT.R2 R: LETTER DATED 6.3.06 BY THE BANK TO THE OMBUDSMAN.

EXT.R2 S: LETTER DT.20.3.06 BY THE BANK TO THE OMBUDSMAN.

EXT.R2 T: LETTER DT.5.4.06 FROM THE PETITIONER TO THE BANK.

EXT.R2 U: LETTER AND ACKNOWLEDGMENT

//TRUE COPY//

P.A. TO JUDGE

ANTONY DOMINIC, J.

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W.P.(C) NO.13603 OF 2006 - T
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Dated this the 5th day of December, 2007

J U D G M E N T

The challenge in this writ petition is against Ext.P13, a communication issued by the 3rd respondent.

2. Ext.P13 has been issued based on a complaint made by the petitioner against the 2nd respondent alleging irregularity in the appropriation of the fixed deposits that were made by the petitioner towards certain liabilities to which, according to him, he is not responsible. The 2nd respondent contested the claim before the 3rd respondent and eventually the complaint is closed and it is so stated in Ext.P13.

3. The complaint in this writ petition is that without any notice or opportunity as contemplated in the scheme by which the 3rd respondent is constituted, the claim made by the petitioner was closed by Ext.P13. The averments supporting the contentions of the petitioner have been made in Para 6 of the writ petition. It is specifically stated that though several round of sitting was conducted, Bank did not file any statement, no

evidence was recorded, petitioner was not heard and that documents relied on by the petitioner were not considered. This precisely is the complaint that the petitioner has raised, about the manner in which his complaint has been dealt with by the 3rd respondent.

4. Though the Bank, in the counter affidavit and in the statements made in this court seeks to justify Ext.P13 issued by the 3rd respondent, I am not satisfied with the manner in which the complaint has been dealt with. In my view, the Ombudsman has clearly failed in providing reasonable opportunity to a complainant in terms of Clause 16 of the Banking Ombudsman Scheme, 2002. It also shows that there has been clear non application of mind on the part of the 3rd respondent. In view of this, I was inclined to set aside Ext.P13 and remand the matter to the 3rd respondent for fresh consideration. At that stage, counsel for the writ petitioner submits that his client is more interested in pursing the matter elsewhere other than the 3rd respondent and seeks to withdraw the very complaint.

5. In the result, Ext.P13 will stand set aside. I clarify that the complaint filed by the petitioner will stand withdrawn

and it will be open to the petitioner to pursue his claim in a Civil Court or any other appropriate forum and that the proceedings before the 3rd respondent or the contents of Ext.P13 shall not cause any prejudice to the petitioner's claims.

Writ petition is disposed of as above.

ANTONY DOMINIC, JUDGE

Rp